1949

File No. City Police II/49 (N)

K

Legal **DEPARTMENT**

B **BRANCH**

876 **Subject.**— P 5 E

Notifications under the City of Bombay Police Act, 1902

File No. City Police II/49 (N)

Std. Sectt. Slip 24 B e.

401-B

Legal Department.

A revised draft notification is sent herewith.

Sd/- J.R.Dhuranmar

10-5

Additional Secretary to Government.

U. O. to M.D. , No. 5234, dated the 12th May 1949.

V.M.D./4-5
4e.

NOTIFICATION.

Home Department,

Bombay Castle, May 1949.

City of Bo___,
Policy Act,
1902.

No. .- In exercise of the powers conferred by sub-section (1) of section 30 of the City of Bombay Police Act, 1902 (Bom. IV of 1902), the Government Bombay is pleased to amend Government notification in the Home Department, No. 8838 8, dated the 21st February 1949 as follows, namely :-

In the said notification -

(i) under the heading "Deputy Inspector the name of K. I. Patel shall be deleted;

(ii) under the heading " Sub-Inspectors the name of K.N. Ambike shall be deleted.

By order of the Governor of Bombay

Secretary to the Government of Bombay
Home Department.

V.M.D./4-6
40.

Legal Department.

The proposal is to issued an order banning the preparation and exhibition of clay models of Gandhiji and Kasturba in the form of God and Goddess respectively, under section 33(8)(c) and (e) of the City of Bombay Police Act, 1902 and section 42(1) of the Bombay District Police Act, 1890.

2. The proposal of the Commissioner of Police, Bombay to issue an Order under sect.... 33(8)(c) of the City of Bombay Police Act , 1902, would not be strictly legal. An order under that clause can only be made in respect of any Public place as defined in section 3(31) of the Act. The preparation of such clay models i in workshops or the exhibition thereof in a private place would not be covered by such order.

3. An order under clause (e) of sub-section (8) of section 33 of the City of Bombay Police Act, 1902 and sub-section (1) of section 42 of the Bombay District Police Act, 1890 can be made on any of the grounds specified therein. The order will hardly be justified on the grounds specified in the provisions referred to ~~xxxx~~The only ground to be seriously considered is whether such clay models of Gandhiji and Kasturba in the form of God and Goddess are of a nature to outrage 'morality' or 'decency' or would lead to the disturbance of the public peace. It will be difficult to argue that the preparation and exhibition of the models of Gandhiji and Kasturba in the form of God and Goddess to be of a nature to outrage 'morality' or 'decency' . Nor is there any probability that such models would lead to a disturbance of the public peace. It may be bad taste or may even be considered

disrespectful. The motive of the person preparing such a model may be to make full use, for the furtherance of his trade, of the devotion in which Gandhiji and Kasturba have been held by the people. In fact some appear to have succeeded in selling their wares by such methods.

4. In addition to the above observations which are equally applicable to the provisions of sub-section (1) of section 48 of the Bombay District Police Act, 1890 , the Bombay High Court in Emp. v/s Dattatreya, 14 B.L.R. 158= has held that on each occasion the District Magistrate must satisfy himself that an emergency has occurred and that there is necessity for an order for the reasons stated in order.

5. The proposed order, therefore, in the area to which the Bombay District Police Act applies would not be legal, and even though the above ruling would not apply to section 33(2)(c) of the City of Bombay Police Act, 1902 ; which 1902, which is differently worded, the proposed order cannot be justified even in the City of Bombay for the reasons given in para 3 above.

Sd/- J.R. Dhurandar.
14.5

Additional Secretary to Government.

U.R. to H.D. No. 5488 , dated the 16th May 1949.

V.M.D./4-6
4c.

Legal Department.

The Corrigendum to para. 3 of the order issued by the Chief Presidency Magistrate dated the 5th July 1949 is in order.

It may be brought to the notice of Chief Presidency Magistrate, Bombay, that the last para of each of the five orders at pages 67,73,79,85 and 91 requires to be amended consequentially by deleting therefrom the words " and an additional sum of 5 p per cent of the total amount of the said riot tax as stated above

Sd/- J.R.Dhurnadar
2-9

Additional Secretary to Government.

U.H. to H.D. No. 10097 , dated the 5th September 1949.

V.H.D./4-6
4c.